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CITATIONS

Cases:

In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 477

ALLIED PAPER MILLS, ET AL., PETITIONERS

v.

FEDERAL TRADE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE FEDERAL TRADE COMMISSION IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 2279) is reported in 168 F. 2d 600. The findings, conclusion, and order of the Federal Trade Commission (R. 2207-2250) are reported in 40 F.T.C. 696.

JURISDICTION

The decree of the Court of Appeals was entered on July 26, 1948 (R. 2293-2297). By order of a Justice of this Court of October 6, 1948, the time for filing a petition for a writ of certiorari was extended for sixty days or to December 23, 1948 (R. 2299). The petition for the writ was filed on December 23, 1948. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and 2101.

QUESTIONS PRESENTED

1. Whether there is substantial support in the evidence for the Federal Trade Commission's findings that petitioners were parties to a combination to restrain and suppress price competition in the sale of book paper.

2. Whether Section 10 of the Administrative Procedure Act expands the scope of judicial review in determining whether administrative findings are supported by substantial evidence.

STATUTES INVOLVED

Section 5 of the Federal Trade Commission Act, 38 Stat. 717, as amended by the Act of March 21, 1938, 52 Stat. 111, 15 U. S. C. 45, provides in part:

> (a) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful. * * *
>
> (c) * * * The findings of the Commission as to the facts, if supported by evidence, shall be conclusive. * * *

Section 10 of the Administrative Procedure Act of June 11, 1946, 60 Stat. 237, 243, 5 U. S. C. 1009, provides so far as pertinent:

> Sec. 10. Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion——
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> * * * * * *

(e) *Scope of review.*—So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

STATEMENT

In a proceeding under Section 5 of the Federal Trade Commission Act, the Commission charged petitioners with engaging in acts and practices to suppress price competition among them in the sale

of book paper in interstate commerce. Petitioners are the Book Paper Manufacturers Association, a voluntary, unincorporated association of manufacturers of book paper, its officers and representatives, and 41 corporate members of the Association. After a hearing, the Commission made findings of fact which may be summarized as follows:

The Association was organized in June 1933 to formulate and administer a code under the National Industrial Recovery Act. Its membership consists of about one-half of all domestic manufacturers of book paper, representing about 80% of the industry's productive capacity. (Fdg. 1(t-1), R. 2215). No concern produces more than 10% of the book paper output (Fdg. 7(a), R. 2227). About 55% of all book paper produced is sold through negotiated contracts, usually directly to users, and the remaining 45% is sold through spot sales, most of this to paper merchants who customarily handle the paper of more than one manufacturer (Fdg. 3(c), R. 2218).

Book paper is paper used in books, magazines, and pamphlets, and for other printing purposes. It may be coated or uncoated and may be made in many types, sizes, weights, and colors, and with many different special characteristics for particular uses. There is a rough classification of uncoated paper into five grades, and a similar classification of coated paper. Book paper may be bundled, or packed on a platform, or sold in rolls

or cases. Papers classified in one grade compete primarily with one another, but there may be competition between adjoining grades. (Fdg. 3(a), (b), R. 2217-2218.)

A long and complicated price list would result if prices were quoted for each possible combination of book paper offered by manufacturers. For a long period of years, variations from some designated standard unit have been quoted in terms of price differentials from the standard unit. At the time of NRA, these differentials and the practices affecting their application varied among manufacturers. A committee of the Association, by discussion and agreement, prepared a standard schedule of price differentials which were adopted by the Association and published as "Trade Customs". In May 1936, the Association adopted a revised set of "Trade Customs," making substantial revisions of those earlier adopted. The matter of price differentials, arbitrary figures used for determining all prices except the base price, has been frequently considered by the Association. The differentials thus promulgated are in general use by petitioners, who have thus united upon a common set of differentials to be used by all regardless of their application to the particular circumstances of a manufacturer. (Fdg. 4, R. 2219-2221.)

Before 1933 there was no uniform pricing method in use by petitioners, and delivered prices, f.o.b. mill prices, zone prices, and partial or full freight

allowance prices were all in use. The Association, following discussion and agreement, adopted for recommendation to NRA a zone system originated by petitioner Champion Paper and Fibre Company. This system divided the country into four zones, and provided for the addition of price differentials of 20, 40, and 60 cents per hundred-weight, respectively, for Zones 2, 3 and 4 above the eastern or Zone 1 base price. After the termination of NRA, the zone system was continued in use by mutual understanding and consent, and is now in general use by respondents. (Fdg. 5, R. 2221-2223.)

Identical quantity differentials, recognizing five different quantity brackets, are in use by petitioners. The record does not show when the differentials were established but, from evidence showing discussion of them in Association meetings, and from other facts of record, the Commission infers they were established as a result of cooperation and understanding among petitioners. There are also uniform price differentials between so-called standard grades of both coated and uncoated paper. While there is no specific showing as to the exact origin of these differentials, they are in common use and changes in them, when made, have been general. Minutes of Association meetings strongly suggest that the price differentials between grades are the result of cooperative action. (Fdg. 6(a)-(c), R. 2223-2227.)

Despite the variety of petitioners' products and

the great number of different prices resulting from product differences in size, weight, finish, color, trim, packing and quantity, the question of price uniformity is reduced to the single element of base price, through the use of standard quantity, grade, and zone price differentials. Petitioners' price lists show identical base prices. They have succeeded in maintaining price uniformity to a remarkable degree. Statistical studies of spot sales of book paper made by petitioners for two one-week periods, ending April 3, 1937, and July 16, 1938, respectively, show that for the 1937 period 85% of the sales, representing 72% of the tonnage and 76% of the dollar value, were in agreement with the price list. For the 1938 period, 86% of the sales, representing 78% of the tonnage and 80% of the dollar value, were in agreement with the price list. (Fdg. 7(a), R. 2227-2228; Fdg. 7(h), R. 2239.)

After the demise of NRA, petitioners pledged continued cooperation to the Association. Many continued to file announcements of price changes with the Association, some announced price changes at Association meetings, and some sent their new price lists to competitors. The Association held regular monthly meetings which were usually well attended. Association officials prepared charts and data showing price trends of various elements of cost in producing book paper, and the price trends in book paper as compared with other com-

modities. Testimony of those who attended Association meetings insisted that discussions were limited to the relationship of book paper prices to costs and to prices of other commodities, but these discussions of price plainly afforded a means of reconciling differences in view and arriving at a common course of action. And documentary evidence in the form of correspondence by various petitioners shows that the discussions at Associations' meetings were not confined to generalities but led to understandings and agreements upon specific matters. During most of the period covered by the complaint, petitioners were aware that they were under informal investigation by the Commission. The minutes of the Association meetings were carefully edited by counsel, and are vague and at times demonstrably incomplete. (Fdg. 7(a)-(h), R. 2227-2239.)

The United States Government Printing Office, a regular and substantial purchaser of book paper, which formerly solicited sealed bids for its requirements of paper, received identical bids, both during and after NRA, and allocated contracts for its requirements among the identical bidders upon the basis of quantities sold to the Printing Office in prior years. Complaints from bidders with no prior record of sales entitling them to participate in the awards, caused a change to determining awards by lot. Identical bids persisted until the Government Printing Office adopted the practice

of making no awards in cases of tied bids, but of purchasing its book paper requirements on the spot market. (Fdg. 8(a), R. 2239-2240.)

In November 1937, Walsh, a paper merchant authorized by petitioner Allied Paper Mills to bid on Government business, submitted bids on eight lots of book paper, which in each instance were about 1% lower than other bids. There was an average of about twelve other bids on each of the eight lots, all but two of which were identical with other bids for the same lot. The contract was awarded to Walsh as low bidder, but petitioner Allied and other petitioners refused to supply him the book paper to fulfill the contract. The Director of Purchases of the Government Printing Office testified that various sources in the industry informed him that Walsh would have difficulty getting paper. Eventually petitioner Allied furnished Walsh about half of the total. From this Walsh incident, as well as other reactions of petitioners to other low bids, the Commission concluded that petitioners had understandings and agreements concerning the prices to the Government Printing Office. (Fdg. 8(c) R. 2242-2245.)

The capacity, tendency, and effect of petitioners' combination and practices were to suppress price competition by the establishment of uniform prices (Fdg. 10, R. 2246).

The Commission concluded that petitioners' acts and practices constituted unfair methods of com-

petition in commerce within the intent and meaning of the Federal Trade Commission Act. It ordered petitioners to desist from carrying out any agreement, understanding, combination, or planned common course of action to (1) fix prices or terms or conditions of sale for book paper, (2) exchange price lists or information for the purpose of restraining price competition, (3) fix price differentials or use those previously fixed, (4) establish zone prices or use those previously established, or (5) use uniform forms of sale contracts in support of things prohibited by the order (R. 2247-2250).

The court below, after a careful and detailed review of the entire record, unanimously concluded that the Commission's findings were supported by substantial evidence, and ordered the Commission's order enforced (R. 2279-2291).[1]

ARGUMENT

I

Apart from the unsubstantial questions claimed to derive from the Administrative Procedure Act (*infra*, pp. 17-21), the petition presents merely the normal question whether there is adequate evidentiary support for the Commission's findings of

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[1] The court concluded that there was not substantial evidence to support a finding that Consolidated Water Power & Paper Company was a party to the combination or concerted activities, and vacated the Commission's order as to it (R. 2289-2290).

combination and unfair practices in the suppression of price competition. No adequate basis for review is thus shown since this Court will not ordinarily grant certiorari to review questions of fact. *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U. S. 206, 208. This Court recently denied certiorari in two cases of precise similarity, each involving the propriety of findings by the Commission that business rivals had, through the medium of a trade association, concertedly maintained practices originated during the NRA period in order to suppress price competition. *Eugene Dietzgen Co.* v. *Federal Trade Commission*, 142 F. 2d 321 (C. A. 7), certiorari denied, 323 U. S. 730; *Fort Howard Paper Co.* v. *Federal Trade Commission*, 156 F. 2d 899 (C.A. 7), certiorari denied, 329 U. S. 795.

The careful analysis of the record made by the Court of Appeals conclusively establishes that there was ample evidence of probative value to support the Commission's findings. When more than 40 manufacturers quote identical basic prices and employ both an identical zone system of pricing and an identical and complex system of price differentials, the inference of agreement is irresistible. *Federal Trade Commission* v. *Cement Institute*, 333 U. S. 683, 715-716; *Milk & Ice Cream Can Institute* v. *Federal Trade Commission*, 152 F. 2d.478 (C.A. 7); *United States Maltsters Ass'n.* v. *Federal Trade Commission*, 152 F. 2d

161 (C.A. 7); *Fort Howard Paper Co.* v. *Federal Trade Commission, supra.*

Petitioners offer only unconvincing explanations for the identity of their quoted prices—an identity which is striking because, in view of the wide variety of book paper products, it is made possible only by application of numerous "price differentials" to the basic prices for designated standard units. The Commission found that before 1933 these price differentials and practices affecting their application varied among book paper manufacturers, but that at the time of NRA a committee of the Association, by discussion and agreement, prepared a standard schedule issued under the designation "Trade Customs" (Fdg. 4(a), R. 2219). In May 1936 the Association adopted and published a revised set of "Trade Customs" which made substantial changes in the earlier publication, including changes in details of applications and in actual price differentials, and the addition of working formulas and new price differentials (Fdg. 4(b), R. 2219-2220).[2] Clearly, here alone is suf-

[2] The substantiality of the differences may be demonstrated by a comparison of the 1933 and 1936 editions (Comm. Exs. 46 and 47, unprinted but on file with this Court). The following are indicative, but not exhaustive, of the numerous changes made: there are new classifications for regular sizes of both uncoated book paper (cf. Ex. 46, pp. 2-3, with Ex. 47, p. 2), and of coated book paper (cf. Ex. 46, pp. 12-13, with Ex. 47, p. 9); there are variations in special charges for finishing uncoated book paper (cf. Ex. 46, pp. 8-9, with Ex. 47, pp. 5-6); the charges for packaging uncoated book paper in flat bundles and on skids were changed (cf. Ex. 46, p. 9, with Ex. 47, p. 7); in the 1936 Edition of the Trade Customs regular sizes for

ficient evidence to warrant a conclusion that petitioners were engaged in illegal, competition-suppressing price-tampering. *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150. And, even if it were true, as petitioners assert (Pet. 41) that the 1936 publication was merely a more completely indexed reissue of the earlier publication, this post-NRA reaffirmation of agreements reached under the shelter of NRA was plainly illegal. *Eugene Dietzgen Co.* v. *Federal Trade Commission, supra; Fort Howard Paper Co.* v. *Federal Trade Commission, supra.*

As to the zone system of pricing, a system adopted by all petitioners during NRA although previously a variety of pricing methods had prevailed (Fdg. 5(a), R. 2221-2222), petitioners press the view that it continued as a result of inertia and of general satisfaction with the system and without any form of joint implementation or mutual consent. While the arbitrary and artificial nature of the system in general use of itself permits an inference of agreement,[3] there is direct evidence in

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coated one-side paper were added (see Ex. 47, pp. 9-10); the 1936 Edition added a provision that open accounts unpaid in 30 days carried 6% interest from due date (see Ex. 47, p. 23).

[3] The four zones established, with differentials of 20, 40, and 60 cents per cwt., respectively, for Zones 2, 3, and 4 added to Zone 1 basic prices, were: North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Arkansas, Louisiana, Mississippi, Alabama, Georgia, South Carolina, and Florida constituted Zone 2; all states north and east of Zone 2 comprised Zone 1; all states west of Zone 2 constituted Zone 4 except that Wyo-

the minutes of the Association showing agreement to continue the zone system of pricing.[4] As to other evidence indicating concerted action on prices, it is enough to point out that the Court of Appeals found the record "replete with documentary evidence composed of correspondence, Association minutes, and oral testimony, from all of which combination and conspiracy is the reasonable, if not required, conclusion" (R. 2287).[5]

Petitioners urge that, even conceding the identity of prices *quoted* by manufacturers, this identity resulted from the forces of competition and also that there was no identity in actual sales prices.

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ming, Colorado, and Texas constituted Zone 3. In the *Fort Howard* case, *supra*, the court said (p. 906): "—the zoning system arose under the NRA, which fact saved its illegality for the statutorily exempt period. When that immunity was lifted, the illegality was again apparent and it is more than an inference to say that parties continuing to utilize that zoning system, born of agreement, suddenly utilized it in order to meet competition, rather than by tacit agreement."

[4] The zone system was recognized and correlated with other Association action. Thus a recommendation of the Association's Executive Committee, approved at a general meeting of November 1935, six months after NRA, in suggesting certain changes in price differentials, stated: "For Zones 2, 3 and 4 the regular zone differentials will apply" (Comm. Exs. No. 98-B, 98-C, R. 2100-2101). Minutes of an Executive Committee meeting in October 1936 show reference to the Trade Customs Committee of "the question relative to the application of light weight differentials" (Comm. Ex. No. 89, R. 2098). The forms furnished its members, after the demise of NRA, for filing prices contained the statement: "Price is for Zone 1, F.O.B. mill, carload rate of freight allowed" (Fdg. 7(b), R. 2228-2229).

[5] Findings 7(g) (R. 2234-2239) and 8(b), (c) (R. 2240-2245) quote many examples of documentary evidence directly evidencing price-fixing.

This argument seems irrelevant since agreement to tamper with prices, quite apart from its effectiveness, is illegal. *United States* v. *Socony-Vacuum Oil Co., supra,* at pp. 225-226. But the Commission found, on evidence which was clearly ample, actual price uniformity to a remarkable degree (Fdg. 7(h), R. 2239). The evidence consisted of statistical studies of spot sales of book paper, a summarization of which is set forth, *supra,* p. 7. Petitioners now make the odd contention that the weeks selected for study were unrepresentative, the first because it was a period of brisk business and rising prices, and the second because it was a slack period of very low prices. Obviously, it is in such relatively abnormal periods that the greatest variance between list and actual prices may be expected.

Petitioners also suggest that, in any event, the evidence showed concerted price-fixing only as to spot transactions and not as to negotiated contracts, which constituted the bulk of the book paper business. Even if this were true, it would not follow that the Commission's order was so broad as to require revision. Cf. *Jacob Siegel Co.* v. *Federal Trade Commission,* 327 U. S. 608. When the proclivity to fix prices is demonstrated by the fact of fixed prices as to a large segment of the market, the Commission would be on firm ground in ordering a cessation of concerted activities involving price-tampering as to all segments of the market.

Cf. *International Salt Co.* v. *United States,* 332 U. S. 392. In any case, it is clear that the Commission found that the petitioners' illegal activities were comprehensive and included activities relating to negotiated contracts.

Government business was not spot business, and yet petitioners do not deny that they submitted identical, though sealed, bids in response to invitations to bid. The theory that petitioners became accustomed during NRA days to bid identically on Government business, and continued this conduct as a matter of habit and as proof to commercial users that list prices were maintained, is unconvincing of itself, and particularly unconvincing in the light of the Walsh episode, *supra,* p. 9. As additional clear evidence that the Commission properly found that the combination suppressed price competition in contract, as well as spot, business, we point to the following uncontested findings: The Association prepared and approved a standard form of contract which is regularly used by many of its members (Fdg. 7(d), R. 2231); the Association adopted in November 1935 a clarification in the application of the 10 cent price differential between spot orders and contract orders (Fdg. 6(a) R. 2224); the price changes which petitioners filed with the Association on forms provided by it or mailed to their rivals were not limited to prices on spot business (Fdg. 7(b), R. 2229).

II

Petitioners assert that the Court of Appeals erroneously discharged its appellate function by ignoring and failing to apply Section 10(e) of the Administrative Procedure Act requiring a reviewing court to set aside administrative findings "unsupported by substantial evidence" (60 Stat. 243, 5 U.S.C. 1009(e)). Since the Court of Appeals plainly stated and exercised its function of review in accordance with long-established rules as to the scope of judicial review and in the light of such precedents as *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, and *Federal Trade Commission* v. *Pacific States Paper Trade Association*, 273 U. S. 52, petitioners' contentions necessarily assume that the Administrative Procedure Act expands the pre-existing scope of judicial review and requires something more, in terms of weighing the evidence, than a determination upon the record that the Commission's findings are predicated upon substantial evidence of probative value. Our answer to petitioners' contentions is that the relevant section of the Administrative Procedure Act was plainly declaratory of the existing "substantial evidence" rule, and that no question worthy of consideration by this Court is thus presented.

Section 10(e), in requiring courts to set aside those findings "unsupported by substantial evi-

dence", adopts the language traditionally used in stating the rule, and its legislative history abundantly reflects Congressional intention that it was a restatement, and not an expansion or limitation, of existing law. The Act was drafted largely by representatives of the American Bar Association, working with representatives of the Department of Justice, under the supervision of the Senate and House Judiciary Committees. The views of the Chairman of the American Bar Association's Special Committee on Administrative Law, Mr. Carl McFarland, testifying before the House Committee on the Judiciary, are therefore entitled to peculiar weight. He testified as to his belief that "the scope of review should be as it now is," and that the language of the provision in question "reflected the present judicial rule". Sen. Doc. No. 248, 79th Cong., 2d sess. "Administrative Procedure Act, Legislative History," pp. 84, 86. The written view of the Attorney General placed before both Committees on the Judiciary and entitled to weight since uncontradicted (see *American Stevedores* v. *Porello,* 330 U. S. 446, 452), was to the effect that Section 10(e) "declares the existing law concerning the scope of judicial review." *Id.* at 230.

While the reports of the Judiciary Committees do not explain Section 10(e) in comparison with pre-existing law, the interpretative comments make it clear that the section was no more than a restate-

ment of a well-established principle.[6] Thus, both reports, in commenting upon what constitutes "substantial evidence", describe it as requiring something more than reliance upon "suspicion, surmise, implications, or plainly incredible evidence." Senator McCarran and Representative Walter, sponsors of the measure in Senate and House, likewise explained the language of Section 10(e) in the phraseology of existing judicial decisions, and neither suggested that any departure from pre-existing principles was contemplated.[7] It is true that Representative Gwynne at one point agreed that Section 10(e) was "a change from the practice that is now in effect in regard to some agencies" (Sen. Doc. No. 248, p. 375), but his fuller comment makes clear that his interpretation of Section 10(e) accorded with such expressions of existing law as that set forth in *Consolidated Edison Co.* v. *Labor Board,* 305 U. S. 197, 229-230. Thus, he stated (Sen. Doc. No. 248, page 375):

> I might say rather briefly that there are two conflicting theories that have often been expounded by the courts. One is that if the verdict of the jury or if the finding of the triers of fact is sustained by a scintilla of evidence,

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[6] S. Rept. No. 752, 79th Cong., 1st Sess., reproduced in Sen. Doc. No. 248 at 185. H. Rept. No. 1980, 79th Cong., 2d Sess., reproduced in Sen. Doc. No. 248 at 233. The discussions of Section 10(e) are given at pages 216-217 and page 279, respectively.

[7] See Sen. Doc. No. 248 at p. 325 for Senator McCarran's remarks; at p. 370 for Representative Walter's.

> any evidence, no matter how lacking in probative force, the court must sustain it. The other is that the court need not sustain a finding unless it is supported by substantial evidence. The latter is the view adopted in this bill.

There is no merit in petitioners' argument that the instant case warrants review because lower courts have disagreed as to the interpretation of Section 10 of the Administrative Procedure Act. *Olin Industries, Inc.* v. *National Labor Relations Board,* 72 F. Supp. 225 (D. Mass.), and *Snyder* v. *Buck,* 75 F. Supp. 902 (D.D.C.), the cases petitioners cite as conflicting, do not refer to the problem of the *scope* of review under subsection (e) of Section 10, but are interpretations of other subsections as to the *right* of review.[8] We are unaware that there is any expressed doubt or disagreement among the lower Federal courts as to the interpretation of Section 10(e). Those courts which have considered the problem have held or implied that the subsection is merely declaratory of well-established principles. *Anderson* v. *Commissioner of Internal Revenue,* 164 F. 2d 870, 874 (C.A. 7), certiorari denied, 334 U. S. 819; *Delta Stevedoring Co.* v. *Henderson,* 168 F. 2d 872, 874 (C.A. 5);

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[8] In *Kirkland* v. *Atlantic Coast Line R. Co.,* 167 F. 2d 529 (C. A. D. C.), certiorari denied, 335 U. S. 843, this Court denied certiorari although petitioner's claim for issuance of the writ was predicated on an asserted conflict of decisions respecting the *right* of review under Section 10 of the Administrative Procedure Act.

Lang Transportation Corp. v. *United States,* 75 F. Supp. 915, 925 (S.D. Cal.); *Wettre* v. *Hague,* 74 F. Supp. 396, 400 (D. Mass.), reversed on other grounds, 168 F. 2d 825 (C.A. 1); *United States* v. *Watkins,* 73 F. Supp. 216, 219-221 (S.D. N.Y.), reversed on other grounds, 164 F. 2d 457 (C.A. 2); cf. *Lincoln Electric Co.* v. *Commissioner of Internal Revenue,* 162 F. 2d 379, 382 (C.A. 6).

CONCLUSION

The decision below is correct and there is no conflict of decisions. It is respectfully submitted, therefore, that the petition for a writ of certiorari should be denied.

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JANUARY 1949.

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